

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID MICHAEL AARON BAKER,

Plaintiff,

v.

BERNARD WARNER, and JEFFREY
UTTECHT,

Defendants.

CASE NO. 3:15-cv-05298-RJB-KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court on the Report and Recommendation of Magistrate Judge Karen Strombom (Dkt. 78) on Defendants' Motion for Summary Judgment (Dkt. 71). The Court has considered the Report and Recommendation, Defendants' Objection, and the remainder of the file herein.

Plaintiff alleges violations of his rights to freedom of speech and to freedom of expression, protected by the First Amendment to the United States Constitution and Article I of the Washington Constitution. Dkt. 1-1 at 14. The Report and Recommendation recommends

1 summary judgment in favor of Defendants, dismissal of Plaintiff's federal claims, and remand of
 2 Plaintiff's remaining state claims. Dkt. 78 at 12.

3 Defendants object to the recommendation to remand the state claims and argue that the
 4 Court should exercise pendant jurisdiction over the remaining state claims, which Defendants
 5 argue should be dismissed with prejudice. Dkt. 79. According to Defendants, "the most sensible
 6 approach" is for the Court to exercise pendent jurisdiction over the state law claims, because (1)
 7 state law "clearly" forecloses any likelihood that Plaintiff's state law claims could succeed, (2)
 8 the state law claims do not "substantially predominate" over the federal claims, and (3) judicial
 9 economy and fairness are better served, because this Court has already invested considerable
 10 time and resources into the case. *Id.* at 3.

11 28 U.S.C. § 1367(c) gives courts the discretion to decline to exercise supplemental
 12 jurisdiction over state law claims if:

- 13 (1) the claim raises a novel or complex issue of State law,
- 14 (2) the claim substantially predominates over the claim or claims over which the district
 court has original jurisdiction,
- 15 (3) the district court has dismissed all claims over which it has original jurisdiction, or
- 16 (4) in exceptional circumstances, there are other compelling reasons for declining
 jurisdiction.

17 Defendants' Objection addresses three of the four subsections, but even if correct, the
 18 Court has discretion to decline to exercise supplemental jurisdiction based on subsection (3),
 19 which the Court elects to do.

20 * * *

21 The Court adopts the Report and Recommendation (Dkt. 78). THEREFORE, Defendants'
 22 Motion for Summary Judgment (Dkt. 71) is GRANTED as to Plaintiff's United States
 23 Constitution claims, which are HEREBY DISMISSED.

1 Plaintiff's claims alleged under Article 1 of the Washington Constitution are HEREBY
2 REMANDED to Thurston County Superior Court.

3 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
4 to any party appearing *pro se* at said party's last known address.

5 Dated this 5th day of August, 2016.

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8 ROBERT J. BRYAN
9 United States District Judge
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